

AMENDED IN SENATE AUGUST 17, 2005

AMENDED IN SENATE JUNE 13, 2005

AMENDED IN ASSEMBLY APRIL 14, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 777

Introduced by Assembly Member Nunez

February 18, 2005

An act ~~relating to economic development~~ to amend Section 23036 of, and to add and repeal Sections 6902.5, 17053.85, 17053.86, 23685, and 23686 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 777, as amended, Nunez. ~~Economic development—Taxes: credits: qualified motion picture production.~~

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill, in accordance with legislative findings contained in this bill, would authorize a credit against those taxes, until January 1, 2016, for taxable years beginning on or after January 1, 2005, subject to specified limitations, in an amount equal to 12% of the qualified amount for qualified wages paid or incurred with respect to the production of each qualified motion picture with an additional 3% for specific qualified motion pictures.

Additionally, this bill would authorize a credit against those taxes, until January 1, 2016, for taxable years beginning on or after January 1, 2005, subject to specified limitations, in an amount equal to 10% of

the incremental qualified production costs paid or incurred with respect to the production of qualified commercials, as defined.

This bill would provide that any portion of these credits that are in excess of the taxpayer's liability are refundable, as applicable. This bill, by authorizing the payment of these amounts, would make an appropriation.

The Corporation Tax Law defines the term "tax" for those purposes, and provides that credits shall be allowed against the tax in a specified order.

This bill would add to that list of credits, credits that contain refundable provisions, but do not contain carryover provisions.

This bill would, in lieu of the credits authorized under the Personal Income Tax and Corporation Tax Law for qualified motion pictures, allow a refund of, or credit against liability for, taxes paid or payable, as applicable, under the Sales and Use Tax Law for qualified motion pictures. This bill would impose specified duties on the California Film Commission and the Franchise Tax Board in administering the credits.

This bill would require the Business, Transportation and Housing Agency to report to the Legislature regarding the effectiveness of the tax incentives created by the bill.

The bill would require a taxpayer to certify under penalty of perjury that he or she is the taxpayer entitled to claim certain deductions with respect to a qualified motion picture, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

~~Existing law establishes the California Film Commission in the Business, Transportation and Housing Agency and requires the commission to work to encourage motion picture and television filming in California, make recommendations to the Legislature, the Governor, the agency, and other state agencies on legislative or administrative actions that may be necessary or helpful to maintain and improve the position of the state's motion picture industry in the~~

~~national and world markets, and develop and oversee the implementation of a Cooperative Motion Picture Marketing Plan.~~

~~This bill would require the commission, in collaboration with the Business, Transportation and Housing Agency, the Labor and Workforce Development Agency, and the Franchise Tax Board, to conduct a statewide analysis, covering 1995 to 2005, of the impact of runaway production on the California film industry. The bill would require the analysis to be completed utilizing existing data and within existing resources and would require the commission to submit a report on the analysis to the Legislature by March 1, 2006.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *Existing law provides for various programs for the*
4 *development of economic opportunities in the state.*

5 (b) *The entertainment industry plays a vital role in sustaining*
6 *California's economy and past legislation enacted in 1985*
7 *created the California Film Commission, currently existing*
8 *within the Business, Transportation and Housing Agency, to*
9 *facilitate, retain, and attract filming in California.*

10 (c) *The Legislature recognizes that film, television, and*
11 *commercial production activity contributed \$34.3 billion to*
12 *California's economy in 2002 and sustains more than 245,000*
13 *jobs. Film, television, and commercial productions create and*
14 *sustain jobs, support thousands of small businesses, and generate*
15 *significant revenue for both state and local governments.*

16 (d) *The Legislature recognizes the importance of providing*
17 *economic opportunities in order to maintain the economic*
18 *contributions made by the entertainment industry.*

19 SEC. 2. *Section 6902.5 is added to the Revenue and Taxation*
20 *Code, to read:*

21 6902.5. (a) *A qualified taxpayer, as designated by the*
22 *California Film Commission pursuant to subdivision (i) of*
23 *Section 17053.85 or 23685, that makes an irrevocable election*
24 *pursuant to subdivision (i) of Section 17053.85 or 23685 to claim*
25 *the credit authorized by this section, may claim that credit as*

1 *either a refund of sales or use taxes paid under this part, or a*
2 *credit against liability for sales or use taxes due under this part,*
3 *that is equal to the credit amount that would otherwise be*
4 *allowed pursuant to those sections.*

5 *(b) Notwithstanding Section 6961, the board may recover any*
6 *refund or credit, or part thereof, that is erroneously made*
7 *pursuant to this section. In recovering any erroneous refund or*
8 *credit made pursuant to this section, the board, in its discretion,*
9 *may issue a deficiency determination in accordance with Article*
10 *2 (commencing with Section 6481) or Article 4 (commencing*
11 *with Section 6536) of Chapter 5. Except in the case of fraud, that*
12 *determination shall be made within three years from the last day*
13 *of the month following the quarterly period in which the board*
14 *approved the refund.*

15 *(c) In the case where the credit allowed by this section exceeds*
16 *the qualified taxpayer's tax liability computed under this part,*
17 *the excess shall first be credited against other amounts due, if*
18 *any, from the qualified taxpayer to this state, including, but not*
19 *limited to, tax deficiencies, penalties, and interest assessed by the*
20 *Franchise Tax Board, tax deficiencies, penalties, and interest*
21 *assessed by the State Board of Equalization, child support*
22 *payments, and payments due under the Unemployment Insurance*
23 *Code, and the balance, if any, shall be refunded to the qualified*
24 *taxpayer.*

25 *(d) The total amount of any credit allocated by the California*
26 *Film Commission that is authorized to be claimed as a refund or*
27 *credit under this section shall be treated as a separate item of*
28 *income of the qualified taxpayer from a source wholly within this*
29 *state for the taxable year in which the credit is allowed.*

30 *(e) The board shall provide an annual listing to the Franchise*
31 *Tax Board, in a form and manner agreed upon by the board and*
32 *the Franchise Tax Board, of the qualified taxpayers who, during*
33 *the year, have claimed a refund or credit of sales or use tax*
34 *under this section and the amount of the refund or credit allowed*
35 *to each qualified taxpayer.*

36 *(f) Any refund, which may exceed the sales and use tax paid by*
37 *that qualified taxpayer, approved by the board pursuant to this*
38 *section shall be payable from the General Fund no earlier than*
39 *the commencement of the 2006-07 fiscal year.*

1 (g) Section 6907, relating to interest on overpayments, shall
2 not apply to any return claiming a credit under this section.

3 (h) The California Film Commission shall provide a list, at
4 least annually, to the State Board of Equalization, in the form
5 and manner as shall be determined by the California Film
6 Commission and the State Board of Equalization, of the names,
7 taxpayer identification numbers, including taxpayer
8 identification numbers of each partner or shareholder, as
9 applicable, the qualified motion pictures for which tax credit was
10 allocated, and the total amount of the tax credit allocated to each
11 qualified taxpayer.

12 (i) This section shall remain in effect only until January 1,
13 2016, and as of that date is repealed, unless a later enacted
14 statute, that is enacted before January 1, 2016, deletes or extends
15 that date.

16 SEC. 3. Section 17053.85 is added to the Revenue and
17 Taxation Code, to read:

18 17053.85. (a) (1) For taxable years beginning on or after
19 January 1, 2005, subject to the limitation in paragraph (2), there
20 shall be allowed to a qualified taxpayer, as designated by the
21 California Film Commission pursuant to subdivision (i), that
22 makes an irrevocable election pursuant to subdivision (i) to
23 claim the credit authorized by this section, as a credit against the
24 "net tax," as defined in Section 17039, an amount equal to 12
25 percent of the qualified amount. A movie of the week and a
26 miniseries, for which an executed licensing agreement from a
27 network or basic cable entity is provided, shall be entitled to an
28 additional 3 percent of the qualified amount.

29 (2) The credit allowed by paragraph (1) shall not exceed the
30 lesser of:

31 (A) The amount of the credit allocated to the qualified
32 taxpayer by the California Film Commission based on the initial
33 application.

34 (B) The amount of the credit calculated based on actual
35 allowable expenditures on the qualified motion picture.

36 (C) Three million dollars (\$3,000,000) per qualified motion
37 picture.

38 (b) For purposes of this section:

1 (1) “Ancillary product” means any article for sale to the
2 public that contains a portion of, or any element of, the motion
3 picture.

4 (2) “Budget” means an estimate of all expenses paid or
5 incurred during the production period of a motion picture. It
6 shall be the same budget used by the qualified taxpayer and
7 production company for all qualified motion picture purposes.

8 (3) “Clip use” means a use of any portion of a motion picture,
9 other than the qualified motion picture, used in the qualified
10 motion picture.

11 (4) (A) “Employee fringe benefits” means the amount
12 allowable as a deduction under this part to the qualified taxpayer
13 involved in the production of the qualified motion picture for any
14 year during the production period with respect to any of the
15 following:

16 (i) Employer contributions under any pension, profit-sharing,
17 annuity, or similar plan.

18 (ii) Employer-provided coverage under any accident or health
19 plan for employees.

20 (iii) The employer’s cost of life or disability insurance
21 provided to employees.

22 (B) Any amount treated as wages under clause (i) of
23 subparagraph (A) of paragraph (21) shall not be taken into
24 account under this paragraph.

25 (5) “Licensing” means any grant of rights to distribute the
26 qualified motion picture, in whole or in part.

27 (6) “Movie of the week” and “miniseries” both mean a motion
28 picture, produced for initial exploitation on television, which
29 contains a scripted storyline requiring two or more consecutive
30 hours of programming.

31 (7) “New to California” means a television series that has not
32 previously engaged in principal photography in this state, other
33 than for a production that is a pilot or presentation.

34 (8) “New use” means any use of a motion picture in a medium
35 other than the medium for which it was initially created.

36 (9) (A) “Postproduction” means the final activities in a
37 qualified motion picture’s production, including editing, foley
38 recording, automatic dialogue replacement, sound editing,
39 scoring and music editing, beginning and end credits, negative
40 cutting, negative processing and duplication, the addition of

1 sound and visual effects, soundmixing, film to tape transfers,
2 encoding, and color correction.

3 (B) "Postproduction" does not include the manufacture or
4 shipping of release prints.

5 (10) "Preproduction" means the process of preparation for
6 actual physical production which begins after a qualified motion
7 picture has received a firm agreement of financial commitment,
8 or is greenlit, with, for example, the establishment of a dedicated
9 production office, the hiring of key crew members, and includes,
10 but is not limited to, activities that include location scouting and
11 execution of contracts with vendors of equipment and stage
12 space.

13 (11) "Principal photography" means the phase of production
14 during which the motion picture is actually shot, as distinguished
15 from preproduction and postproduction.

16 (12) "Production accountant" means an employee of the
17 production company whose duties include some or all of the
18 following activities: oversight of production budgets, cost
19 reporting, order management, payment of expenses, and the
20 review of financial reports for accuracy and completeness.

21 (13) "Production company" means a company primarily
22 engaged in qualified production activities that have been
23 approved by the California Film Commission.

24 (14) "Production period" means the period of time in which
25 the preproduction, principal photography, and postproduction
26 occurs until the qualified motion picture is completed, as
27 described in clause (v) of subparagraph (C) of paragraph (18).

28 (15) (A) "Qualified amount" means all of the following:

29 (i) The total amount paid or incurred during the production
30 period for qualified wages with respect to the production of each
31 qualified motion picture.

32 (ii) The total amount paid or incurred during the production
33 period for qualified property.

34 (iii) Amounts paid or incurred for qualified wages and
35 qualified property related to the qualified motion picture for
36 preproduction costs that include set design and construction,
37 props, wardrobe, prosthetics, testing, and location scouting that
38 are paid or incurred. In the case of a television series described
39 in clause (ii) of subparagraph (C) of paragraph (18), the
40 amounts paid or incurred for the items described in this

1 *subparagraph shall be ratably allocated amongst the episodes*
2 *produced in the first season.*

3 *(B) Notwithstanding subparagraph (A), the term “qualified*
4 *amount” shall not include any qualified wages paid or incurred*
5 *for services performed nor any qualified property purchased or*
6 *leased before January 1, 2006.*

7 *(16) “Qualified entity” means a personal service corporation*
8 *as defined in Section 269A(b)(1) of the Internal Revenue Code, a*
9 *payroll services corporation, or any entity receiving qualified*
10 *wages with respect to services performed by a qualified*
11 *individual.*

12 *(17) (A) “Qualified individual” means any individual who*
13 *performs services during the production period in an activity*
14 *related to the production of a qualified motion picture.*

15 *(B) “Qualified individual” shall not include either of the*
16 *following:*

17 *(i) Any individual related to the qualified taxpayer as*
18 *described in subparagraph (A), (B), or (C) of Section 51(i)(1) of*
19 *the Internal Revenue Code.*

20 *(ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of*
21 *the Internal Revenue Code, of the qualified taxpayer.*

22 *(18) (A) “Qualified motion picture” means any motion*
23 *picture that is produced, adapted, or altered for exploitation in,*
24 *on, or through any medium or by any device, including, but not*
25 *limited to, a motion picture produced for exploitation in movie*
26 *theaters, through any form of television, videotapes, videodiscs,*
27 *DVDs, or any other digital format or on commercial carriers.*
28 *“Qualified motion picture” shall also include, but shall not be*
29 *limited to, all adapted versions thereof, whether adapted for*
30 *exploitation in any language, for any media, or otherwise.*

31 *(B) (i) “Qualified motion picture” shall not include any*
32 *motion picture produced for private noncommercial use, such as*
33 *weddings or graduations, by students made as part of any*
34 *educational course, or any motion picture produced for*
35 *industrial purposes.*

36 *(ii) “Qualified motion picture” shall not include a news*
37 *program, current events or public events program, talk show,*
38 *game show, sporting event or activity, awards show, telethon or*
39 *other production that solicits funds, reality television program, a*
40 *feature where 80 percent of more of the content consists of*

1 computer-generated images, clip-based programming if more
2 than 50 percent of the content is comprised of licensed footage,
3 documentaries, variety programs, daytime dramas, strip shows,
4 one-half-hour (air time) episodic television shows, or any
5 production that falls within the recordkeeping requirements of
6 Section 2257 of Title 18 of the United States Code.

7 (C) To qualify as a “qualified motion picture,” all of the
8 following additional conditions shall be satisfied:

9 (i) The qualified motion picture shall be a feature with a
10 minimum budget of five hundred thousand dollars (\$500,000)
11 and a maximum budget of seventy-five million dollars
12 (\$75,000,000), or a movie of the week or miniseries with a
13 minimum budget of five hundred thousand dollars (\$500,000)
14 and a maximum budget of seventy-five million dollars
15 (\$75,000,000).

16 (ii) A qualified motion picture shall also include a single
17 episode in a single season, not to exceed 22 episodes per season,
18 of a television series new to California with a minimum budget of
19 five hundred thousand dollars (\$500,000) and a maximum budget
20 of one million eight hundred thousand dollars (\$1,800,000) per
21 episode. This clause shall only apply to the first three seasons of
22 a television series that is new to California.

23 (iii) The actual expenses totaled at the completion of the
24 qualified motion picture must fall within the fiscal ranges
25 established in clause (i) or (ii) at the time of application to the
26 California Film Commission.

27 (iv) At least 75 percent of the total days spent in principal
28 photography of a qualified motion picture occur wholly in
29 California.

30 (v) Production of the qualified motion picture is completed
31 within 30 months of the date on which the qualified taxpayer’s
32 application was approved by the California Film Commission.
33 For the purposes of this section, a qualified motion picture is
34 “completed” when the process of postproduction has been
35 finished, and a final answer print or broadcast delivery air
36 master of the qualified motion picture is produced.

37 (vi) Principal photography of the qualified motion picture
38 begins within 180 days of the designation of the taxpayer as a
39 qualified taxpayer by the California Film Commission.

1 (D) For the purposes of clauses (i) and (ii) of subparagraph
2 (C), the following additional rules apply:

3 (i) In computing the total amounts paid or incurred for the
4 production of a qualified motion picture, all amounts paid or
5 incurred by all persons or entities that share in the costs of the
6 qualified motion picture shall be aggregated.

7 (ii) In the case of a television series, described in clause (ii) of
8 subparagraph (C), each episode shall be treated as a separate
9 qualified motion picture.

10 (E) For purposes of computing the limitations under this
11 paragraph, “wages” means all amounts described in
12 subparagraph (A) of paragraph (21), provided that these
13 amounts are paid for services performed or rendered within this
14 state.

15 (19) (A) “Qualified property” means tangible personal
16 property purchased or leased in California and is used primarily
17 in the production of a qualified motion picture.

18 (B) “Qualified property” shall not include a story, script, or
19 scenario to be used for a qualified motion picture, or the literary,
20 dramatic, or musical material upon which the qualified motion
21 picture is based or may be adapted, or any rights related to the
22 foregoing.

23 (20) (A) “Qualified taxpayer” means an applicant who has
24 been allocated tax credits by the California Film Commission
25 pursuant to subdivision (i).

26 (B) In the case of any passthrough entity, the determination of
27 whether a taxpayer is a qualified taxpayer under this section
28 shall be made at the entity level and any credit under this section
29 shall be allowed to the passthrough entity and passed through to
30 the partners or shareholders in accordance with applicable
31 provisions of Part 10 (commencing with Section 17001) or Part
32 11 (commencing with Section 23001). For purposes of this
33 paragraph, “passthrough entity” means any partnership or “S”
34 corporation.

35 (21) (A) “Qualified wages” means all of the following:

36 (i) Any wages reported under Section 13050 of the
37 Unemployment Insurance Code that were paid or incurred by the
38 production company involved in the production of a qualified
39 motion picture with respect to a qualified individual for services

1 *performed on the qualified motion picture production within this*
2 *state.*

3 *(ii) The portion of any employee fringe benefits paid or*
4 *incurred by the production company involved in the production*
5 *of the qualified motion picture that are properly allocable to*
6 *qualified wage amounts described in clause (i).*

7 *(iii) Any payments made to a qualified entity for services*
8 *performed on a qualified motion picture in this state by qualified*
9 *individuals within the meaning of paragraph (17).*

10 *(iv) Remuneration paid to an independent contractor, as*
11 *described in Section 2750.5 of the Labor Code, who is a qualified*
12 *individual for services performed within this state by that*
13 *qualified individual.*

14 *(B) "Qualified wages" shall not include any of the following:*

15 *(i) Expenses, including wages, for legal or accounting services*
16 *except production accountants.*

17 *(ii) Expenses, including wages, in excess of the first*
18 *twenty-five thousand dollars (\$25,000) paid per person per*
19 *qualified motion picture for writers, directors, music directors,*
20 *music composers, music supervisors, producers, and performers,*
21 *other than background actors with no scripted lines.*

22 *(iii) Expenses, including wages, related to new use, reuse, clip*
23 *use, licensing, secondary markets, or residual compensation, or*
24 *the creation of any ancillary product, including, but not limited*
25 *to, a soundtrack album, toy, game, trailer, or teaser.*

26 *(iv) Expenses, including wages, paid or incurred with respect*
27 *to acquisition, development, turnaround, or any rights thereto.*

28 *(v) Expenses, including wages, related to financing, overhead,*
29 *marketing, promotion, or distribution of a qualified motion*
30 *picture.*

31 *(22) "Residual compensation" means supplemental*
32 *compensation paid at the time that a motion picture is exhibited*
33 *through new use, reuse, clip use, or in secondary markets, as*
34 *distinguished from payments made during production.*

35 *(23) "Reuse" means any use of a qualified motion picture in*
36 *the same medium for which it was created, following the initial*
37 *use in that medium.*

38 *(24) "Secondary markets" means media in which a qualified*
39 *motion picture is exhibited following the initial media in which it*
40 *is exhibited.*

1 (c) (1) Notwithstanding subdivision (g) of Section 17039,
2 relating to credits attributable to a disregarded business entity,
3 in the case where the credit allowed by this section exceeds the
4 taxpayer's tax liability computed under this part, the excess shall
5 be credited against other amounts due, if any, from the taxpayer
6 and the balance, if any, shall be refunded to the taxpayer.

7 (2) Those amounts that are determined by the Franchise Tax
8 Board to be necessary to make the refunds required by this
9 subdivision shall be transferred from the Personal Income Tax
10 Fund to the Tax Relief and Refund Account established pursuant
11 to Section 19611 and shall, notwithstanding Section 13340 of the
12 Government Code, be continuously appropriated from that
13 account, commencing with the 2006-07 fiscal year, but otherwise
14 without regard to fiscal years, to the Franchise Tax Board for the
15 purpose of making those refunds.

16 (d) The amount of any credit allowed under this section to the
17 qualified taxpayer shall be treated as a separate item of income
18 of the qualified taxpayer from a source wholly within this state
19 for the taxable year in which the credit is allowed.

20 (e) No credit shall be allowed pursuant to this section unless
21 the qualified taxpayer substantiates, by adequate books and
22 records or by sufficient evidence corroborating his or her own
23 statement, that:

24 (1) The qualified wages and the qualified property on which
25 the credit was calculated were actually paid or incurred in the
26 amount claimed. Substantiation of this item shall include proof
27 that the services were performed in California and the qualified
28 property was purchased or leased in California.

29 (2) The motion picture was a qualified motion picture.
30 Substantiation of this item shall include, but is not limited to, the
31 following:

32 (A) Identification of each qualified individual.

33 (B) The specific start and end dates of production.

34 (C) The total wages paid and amount and type of qualified
35 property purchased.

36 (D) The amount of qualified wages paid to each qualified
37 individual.

38 (E) Certification from the Director of the California Film
39 Commission that identifies the motion picture as a qualified
40 motion picture.

1 (f) The Franchise Tax Board shall provide an annual listing to
2 the State Board of Equalization, in a form and manner agreed
3 upon by the Franchise Tax Board and the State Board of
4 Equalization, of the qualified taxpayers who, during that
5 reporting period, have claimed a credit under this section,
6 including the amount of the credit allowed to each qualified
7 taxpayer.

8 (g) Subdivision (c) of Section 19341, relating to interest on
9 overpayments, shall not apply to any return claiming a credit
10 under this section.

11 (h) If the qualified taxpayer fails to attach the certification
12 issued by the California Film Commission in accordance with
13 subdivision (i), the credit shall be disallowed and assessed and
14 collected under Section 19051.

15 (i) (1) For purposes of this section, the Director of the
16 California Film Commission shall do all of the following:

17 (A) Allocate tax credits to applicants.

18 (B) Establish a procedure for qualified taxpayers to file with
19 the California Film Commission a written application, on a form
20 jointly prescribed by the California Film Commission and the
21 Franchise Tax Board, for allocation of tax credits. The
22 application shall be filed under penalty of perjury and include,
23 but not be limited to, the following information:

24 (i) The budget for the motion picture production.

25 (ii) A one-line shooting schedule.

26 (iii) A financing plan for the production.

27 (iv) An application fee.

28 (v) The copyright registration number for the screenplay, as
29 reflected on the certificate of registration issued under the
30 authority of Section 410 of Title 17 of the United States Code,
31 relating to registration of claim and issuance of certificate.

32 (vi) Any other information deemed relevant by the California
33 Film Commission.

34 (C) Establish a procedure for qualified taxpayers to make an
35 irrevocable election to claim the tax credit allocation as a credit
36 pursuant to this section or as a refund or credit pursuant to
37 Section 6902.5.

38 (D) Determine and designate who is a qualified taxpayer
39 meeting the requirements of this section.

1 (E) Process and approve, or reject, all applications on a
2 first-come, first-served basis.

3 (F) Provide for the cancellation of the allocated credits, if
4 principal photography on the qualified motion picture does not
5 begin within 180 days after notification of the credit allocation
6 by the California Film Commission in accordance with
7 subdivision (j).

8 (G) Establish specific audit requirements, in addition to those
9 provided under current law, that must be complied with prior to
10 the issuance of the certificate required by subparagraph (H), and
11 provide for the reallocation of previously approved credits that
12 are disallowed pursuant to the audit requirements, in accordance
13 with subdivision (j).

14 (H) Issue a certificate to the qualified taxpayer setting forth
15 the name of the qualified taxpayer, identification of the qualified
16 motion picture, and the total amount of the tax credit allocated.

17 (2) No later than March 1, 2006, the California Film
18 Commission shall promulgate rules and regulations necessary to
19 establish procedures, processes, requirements, and rules
20 identified in or required to implement this section. Rules and
21 regulations may be adopted on an emergency basis if necessary
22 to meet the March 1, 2006, deadline. The California Film
23 Commission may amend these rules and regulations as
24 necessary. The California Film Commission may adopt rules and
25 regulations to more narrowly define the terms listed in
26 subdivision (b) to limit their meaning, but may not expand the
27 definition of any terms defined in subdivision (b).

28 (j) The aggregate amount of credits that may be allocated in
29 any calendar year pursuant to this section and Section 23685,
30 and shall be an amount equal to the sum of all of the following:

31 (1) _____ million dollars (\$_____) for each calendar quarter,
32 and each calendar quarter thereafter.

33 (2) The unused credit ceiling, if any, for the preceding
34 calendar quarter.

35 (3) The amount of previously allocated credit cancelled or
36 disallowed in the preceding calendar quarter by reason of
37 subparagraph (F) or subparagraph (G) of paragraph (1) of
38 subdivision (i).

39 (k) The California Film Commission shall provide a list, at
40 least annually, to the Franchise Tax Board, in the form and

manner as shall be determined by the California Film Commission and the Franchise Tax Board, of the names, taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, the qualified motion pictures for which tax credit was allocated, and the total amount of the tax credit allocated to each qualified taxpayer.

(l) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 4. Section 17053.86 is added to the Revenue and Taxation Code, to read:

17053.86. (a) (1) For taxable years beginning on or after January 1, 2005, subject to the limitation in paragraph (2), there shall be allowed to a qualified commercial production company, as designated by the California Film Commission pursuant to subdivision (h), as a credit against the "net tax," as defined in Section 17039, an amount equal to 12 percent of the incremental qualified production costs.

(2) The credit allowed by paragraph (1) shall not exceed:

(A) Five hundred thousand dollars (\$500,000) per qualified production company per calendar year.

(B) The amount of the credit allocated by the California Film Commission to the qualified commercial production company pursuant to subdivision (h).

(b) For the purposes of this section:

(1) "Base year" is the taxable year preceding the taxable year in which the credit is claimed.

(2) (A) "Employee fringe benefits" means the amount allowable as a deduction under this part to the qualified commercial production company involved in the production of the qualified commercial for any year during the production period with respect to any of the following:

(i) Employer contributions under any pension, profit-sharing, annuity, or similar plan.

(ii) Employer-provided coverage under any accident or health plan for employees.

(iii) The employer's cost of life or disability insurance provided to employees.

1 (B) Any amount treated as wages under clause (i) of
2 subparagraph (A) of paragraph (10) shall not be taken in
3 account under this paragraph.

4 (3) “Incremental qualified production costs” are any qualified
5 production costs for the taxable year greater than the qualified
6 production costs for the base year.

7 (4) “Principal photography” means the phase of production
8 during which the qualified commercial is actually shot.

9 (5) “Postproduction” means the final activities in a qualified
10 commercial’s production, including, but not limited to, offline
11 editorial, online editorial, dailies, color correction, compositing,
12 CGI, graphics, sound editorial, sound mixing, sound design,
13 automated dialogue replacement, foley recording, music
14 composition and scoring, and duplication associated with the
15 above process.

16 (6) (A) “Qualified commercial” means a commercial or
17 advertisement composed of moving images and sounds that is
18 recorded on film, videotape, or other digital medium, created for
19 display on a network, regional channel, or cable where 75
20 percent of the total production days spent in principal
21 photography occur wholly in California.

22 (B) “Qualified commercial” shall not include any program
23 length production with an advertising component including a
24 documentary length commercial, an infomercial, news, or
25 current affairs program, interview or talk program, network
26 promotion (short form content intended to promote other
27 programming), sporting event, game show, award ceremonies,
28 daytime dramas, reality entertainment programming or program
29 intended primarily for industrial, corporate, or institutional end
30 users, fundraising or political commercials, a program
31 consisting primarily of stock footage, a program produced by an
32 organization organized under Section 527 of the Internal
33 Revenue Code, or any production that falls within the
34 recordkeeping requirements of Section 2257 of Title 18 of the
35 United States Code.

36 (7) (A) “Qualified commercial production company” means a
37 taxpayer, allocated tax credits by the California Film
38 Commission pursuant to subdivision (h), that is principally
39 engaged in the production of a qualified commercial and has
40 control over the selection of production location, deployment, or

1 *management of the production equipment, and directly employs*
2 *the production crew on the qualified commercial, or is a*
3 *taxpayer who provides postproduction services on a qualified*
4 *commercial.*

5 *(B) In the case of any passthrough entity, the determination of*
6 *whether a taxpayer is a qualified commercial production*
7 *company under this section shall be made at the entity level and*
8 *any credit under this section shall be allowed to the passthrough*
9 *entity and passed through to the partners or shareholders in*
10 *accordance with applicable provisions of Part 10 (commencing*
11 *with Section 17001) or Part 11 (commencing with Section*
12 *23001). For the purposes of this paragraph, "passthrough*
13 *entity" means any partnership or "S" corporation.*

14 *(8) (A) "Qualified individual" means any individual who*
15 *performs services during the production period in an activity*
16 *related to the production of a qualified commercial.*

17 *(B) "Qualified individual" shall not include either of the*
18 *following:*

19 *(i) Any individual related to the qualified commercial*
20 *production company as described in subparagraph (A), (B), (C),*
21 *or Section 51(i)(1) of the Internal Revenue Code.*

22 *(ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of*
23 *the Internal Revenue Code, of the qualified commercial*
24 *production company.*

25 *(9) "Qualified production costs" means all of the following:*

26 *(A) Costs for tangible property used and services performed*
27 *directly and predominately in the production of a qualified*
28 *commercial.*

29 *(B) Costs for qualified wages, technical and crew production*
30 *costs, allocable portions of depreciation on equipment directly*
31 *used in production, rental or other expenditures for commercial*
32 *production facilities, props, makeup, wardrobe, film processing,*
33 *camera rental, sound recording, set construction, lighting,*
34 *on-location meals, and lodging.*

35 *(C) Costs for equipment and services required to complete*
36 *postproduction of the qualified commercial.*

37 *(D) "Qualified production costs" does not include costs for*
38 *story, script, or scenario to be used for a qualified commercial,*
39 *or any qualified wages paid or incurred before January 1, 2006.*

40 *(10) (A) "Qualified wages" means all of the following:*

1 (i) Any wages reported under Section 13050 of the
2 Unemployment Insurance Code that were paid or incurred by the
3 qualified commercial production company involved in the
4 production of a qualified commercial with respect to a qualified
5 individual for services performed on the qualified commercial
6 production within this state.

7 (ii) The portion of any employee fringe benefits paid or
8 incurred by the qualified commercial production company
9 involved in the production of a qualified commercial that are
10 properly allocated to qualified wage amounts described in clause
11 (i).

12 (iii) Remuneration paid to a qualified individual for services
13 performed within this state by that qualified individual.

14 (iv) Remuneration paid to an independent contractor, as
15 described in Section 2750.5 of the Labor Code, who is a qualified
16 individual for services performed in this state by that qualified
17 individual.

18 (B) "Qualified wages" shall not include wages, salaries, or
19 other compensation for writers, directors, music directors,
20 producers, and performers (other than background actors with
21 no scripted lines who are employed by a qualified commercial
22 production company).

23 (c) (1) Notwithstanding subdivision (g) of Section 17039,
24 relating to credits attributable to a disregarded business entity,
25 in the case where the credit allowed by this section exceeds the
26 taxpayer's tax liability computed under this part, the excess shall
27 be credited against other amounts due, if any, from the taxpayer
28 and the balance, if any, shall be refunded to the taxpayer.

29 (2) Those amounts that are determined by the Franchise Tax
30 Board to be necessary to make the refunds required by this
31 subdivision shall be transferred from the Personal Income Tax
32 Fund to the Tax Relief and Refund Account established pursuant
33 to Section 19611 and shall, notwithstanding Section 13340 of the
34 Government Code, be continuously appropriated from that
35 account, commencing with the 2006-07 fiscal year, but otherwise
36 without regard to fiscal years, to the Franchise Tax Board for the
37 purpose of making those refunds.

38 (d) The amount of any credit allowed under this section to the
39 qualified taxpayer shall be treated as a separate item of income

1 of the qualified taxpayer from a source wholly within this state
2 for the taxable year in which the credit is allowed.

3 (e) No credit shall be allowed pursuant to this section unless
4 the qualified commercial production company substantiates, by
5 adequate books and records or by sufficient evidence
6 corroborating his or her own statement, that:

7 (1) The incremental qualified production costs upon which the
8 credit was calculated were actually paid or incurred in the
9 amount claimed.

10 (2) The commercial was a qualified commercial.
11 Substantiation of this item shall include, but is not limited to, the
12 following:

13 (A) Identification of each qualified individual.

14 (B) The specific start and end dates of production.

15 (C) The total wages paid.

16 (D) The amount of qualified wages paid to each qualified
17 individual.

18 (E) Certification from the Director of the California Film
19 Commission as required in subdivision (h).

20 (f) Subdivision (c) of Section 19341, relating to interest on
21 overpayments, shall not apply to any return claiming a credit
22 under this section.

23 (g) If the qualified commercial production company fails to
24 attach the certification issued by the Director of the California
25 Film Commission, in accordance with subdivision (h), the credit
26 shall be disallowed and assessed and collected under Section
27 19051.

28 (h) (1) For purposes of this section, the Director of the
29 California Film Commission shall do all of the following:

30 (A) Allocate tax credits to applicants, including establishing a
31 procedure to allocate tax credits among qualified commercial
32 production companies pursuant to paragraph (2) of subdivision
33 (i).

34 (B) Establish a procedure for qualified commercial production
35 companies to file with the California Film Commission a written
36 application, on a form jointly prescribed by the California Film
37 Commission and the Franchise Tax Board, for allocation of tax
38 credits. The application shall be filed under penalty of perjury
39 and include, but not be limited to, the following information:

40 (i) The qualified production costs for the base year.

1 (ii) *The qualified production costs for the taxable year in*
2 *which the credit is claimed.*

3 (iii) *An application fee.*

4 (iv) *Any other information deemed relevant by the California*
5 *Film Commission.*

6 (C) *Determine and designate who is a qualified commercial*
7 *production company meeting the requirements of this section.*

8 (D) *Process and approve, or reject, all applications.*

9 (E) *Establish specific audit requirements, in addition to those*
10 *provided under current law, that must be complied with prior to*
11 *the issuance of the certificate required by subparagraph (F), and*
12 *provide for the reallocation of previously approved credits that*
13 *are disallowed pursuant to the audit requirements, in accordance*
14 *with subdivision (i).*

15 (F) *Issue a certificate to the qualified taxpayer setting forth*
16 *the name of the qualified taxpayer and the total amount of the tax*
17 *credit allocated.*

18 (2) *No later than March 1, 2006, the California Film*
19 *Commission shall promulgate rules and regulations necessary to*
20 *establish procedures, processes, requirements, and rules*
21 *identified in or required to implement this section. Rules and*
22 *regulations may be adopted on an emergency basis if necessary*
23 *to meet the March 1, 2006, deadline. The California Film*
24 *Commission may amend these rules and regulations as*
25 *necessary. The California Film Commission may adopt rules and*
26 *regulations to more narrowly define the terms listed in*
27 *subdivision (b) to limit their meaning, but may not expand the*
28 *definition of any terms defined in subdivision (b).*

29 (i) (1) *The aggregate amount of credits that may be allocated*
30 *in any calendar year pursuant to this section and Section 23686*
31 *shall be an amount equal to the sum of all of the following:*

32 (A) *___ million dollars (\$___) for the 2006 calendar year,*
33 *and each calendar year thereafter.*

34 (B) *The unused credit ceiling, if any, for the preceding*
35 *calendar years.*

36 (C) *The amount of previously allocated credit canceled or*
37 *disallowed in the calendar year by reason of subparagraph (E)*
38 *of paragraph (1) of subdivision (h).*

39 (2) *If the amount allocable to qualified commercial production*
40 *companies exceeds the aggregate amount of credits that may be*

1 *allocated in any calendar year, the credits shall be distributed to*
2 *qualified commercial production companies as follows:*

3 *(A) The California Film Commission shall allocate the credits*
4 *on a pro rata basis to qualified commercial production*
5 *companies for the designated period.*

6 *(B) The California Film Commission will compute the pro rata*
7 *allocation based on submitted applications from all qualified*
8 *commercial production companies within 120 days of the*
9 *application due date.*

10 *(j) The California Film Commission shall provide a list, at*
11 *least annually, to the Franchise Tax Board, in the form and*
12 *manner as shall be determined by the California Film*
13 *Commission and the Franchise Tax Board, of the names,*
14 *taxpayer identification numbers, including taxpayer*
15 *identification numbers of each partner or shareholder, as*
16 *applicable, the qualified motion pictures for which tax credit was*
17 *allocated, and the total amount of the tax credit allocated to each*
18 *qualified taxpayer.*

19 *(k) This section shall remain in effect only until January 1,*
20 *2016, and as of that date is repealed, unless a later enacted*
21 *statute, that is enacted before January 1, 2016, deletes or extends*
22 *that date.*

23 *SEC. 5. Section 23036 of the Revenue and Taxation Code is*
24 *amended to read:*

25 23036. (a) (1) The term “tax” includes any of the following:

26 (A) The tax imposed under Chapter 2 (commencing with
27 Section 23101).

28 (B) The tax imposed under Chapter 3 (commencing with
29 Section 23501).

30 (C) The tax on unrelated business taxable income, imposed
31 under Section 23731.

32 (D) The tax on—S “S” corporations imposed under Section
33 23802.

34 (2) The term “tax” does not include any amount imposed
35 under paragraph (1) of subdivision (e) of Section 24667 or
36 paragraph (2) of subdivision (f) of Section 24667.

37 (b) For purposes of Article 5 (commencing with Section
38 18661) of Chapter 2, Article 3 (commencing with Section 19031)
39 of Chapter 4, Article 6 (commencing with Section 19101) of
40 Chapter 4, and Chapter 7 (commencing with Section 19501) of

1 Part 10.2, and for purposes of Sections 18601, 19001, and 19005,
2 the term “tax” also includes all of the following:

3 (1) The tax on limited partnerships, imposed under Section
4 17935, the tax on limited liability companies, imposed under
5 Section 17941, and the tax on registered limited liability
6 partnerships and foreign limited liability partnerships imposed
7 under Section 17948.

8 (2) The alternative minimum tax imposed under Chapter 2.5
9 (commencing with Section 23400).

10 (3) The tax on built-in gains of S “S” corporations, imposed
11 under Section 23809.

12 (4) The tax on excess passive investment income of S “S”
13 corporations, imposed under Section 23811.

14 (c) Notwithstanding any other provision of this part, credits
15 are allowed against the “tax” in the following order:

16 (1) Credits that do not contain carryover provisions.

17 (2) Credits that, when the credit exceeds the “tax,” allow the
18 excess to be carried over to offset the “tax” in succeeding taxable
19 years, except for those credits that are allowed to reduce the
20 “tax” below the tentative minimum tax, as defined by Section
21 23455. The order of credits within this paragraph shall be
22 determined by the Franchise Tax Board.

23 (3) The minimum tax credit allowed by Section 23453.

24 (4) Credits that are allowed to reduce the “tax” below the
25 tentative minimum tax, as defined by Section 23455.

26 (5) Credits for taxes withheld under Section 18662.

27 (6) *Credits that contain refundable provisions, but do not*
28 *contain carryover provisions.*

29 (d) Notwithstanding any other provision of this part, each of
30 the following applies:

31 (1) No credit may reduce the “tax” below the tentative
32 minimum tax (as defined by paragraph (1) of subdivision (a) of
33 Section 23455), except the following credits:

34 (A) The credit allowed by former Section 23601 (relating to
35 solar energy).

36 (B) The credit allowed by former Section 23601.4 (relating to
37 solar energy).

38 (C) The credit allowed by former Section 23601.5 (relating to
39 solar energy).

1 (D) The credit allowed by Section 23609 (relating to research
2 expenditures).

3 (E) The credit allowed by former Section 23609.5 (relating to
4 clinical testing expenses).

5 (F) The credit allowed by Section 23610.5 (relating to
6 low-income housing).

7 (G) The credit allowed by former Section 23612 (relating to
8 sales and use tax credit).

9 (H) The credit allowed by Section 23612.2 (relating to
10 enterprise zone sales or use tax credit).

11 (I) The credit allowed by former Section 23612.6 (relating to
12 Los Angeles Revitalization Zone sales tax credit).

13 (J) The credit allowed by former Section 23622 (relating to
14 enterprise zone hiring credit).

15 (K) The credit allowed by Section 23622.7 (relating to
16 enterprise zone hiring credit).

17 (L) The credit allowed by former Section 23623 (relating to
18 program area hiring credit).

19 (M) The credit allowed by former Section 23623.5 (relating to
20 Los Angeles Revitalization Zone hiring credit).

21 (N) The credit allowed by former Section 23625 (relating to
22 Los Angeles Revitalization Zone hiring credit).

23 (O) The credit allowed by Section 23633 (relating to targeted
24 tax area sales or use tax credit).

25 (P) The credit allowed by Section 23634 (relating to targeted
26 tax area hiring credit).

27 (Q) The credit allowed by Section 23649 (relating to qualified
28 property).

29 (2) No credit against the tax may reduce the minimum
30 franchise tax imposed under Chapter 2 (commencing with
31 Section 23101).

32 (e) Any credit which is partially or totally denied under
33 subdivision (d) is allowed to be carried over to reduce the “tax”
34 in the following year, and succeeding years if necessary, if the
35 provisions relating to that credit include a provision to allow a
36 carryover of the unused portion of that credit.

37 (f) Unless otherwise provided, any remaining carryover from a
38 credit that has been repealed or made inoperative is allowed to be
39 carried over under the provisions of that section as it read
40 immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer is eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S “S” corporation, any credit allowed by this part is computed at the S “S” corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit applies to the S “S” corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity is limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer’s “tax,” as defined in subdivision (a), for the taxable year is limited to an amount equal to the excess of the taxpayer’s regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer’s regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit is allowed if the taxpayer’s regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer’s regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

(j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-through entity described in paragraph (2), any credit passed

1 through to the taxpayer in the taxpayer's first taxable year
2 beginning on or after the date the credit is no longer operative
3 may be claimed by the taxpayer in that taxable year,
4 notwithstanding the repeal of the statute authorizing the credit
5 prior to the close of that taxable year.

6 (2) For purposes of this subdivision, "eligible pass-through
7 entity" means any partnership or ~~S~~ "S" corporation that files its
8 return on a fiscal year basis pursuant to Section 18566, and that is
9 entitled to a credit pursuant to this part for the taxable year that
10 begins during the last year a credit is operative.

11 (3) This subdivision applies to credits that become inoperative
12 on or after the operative date of the act adding this subdivision.

13 *SEC. 6. Section 23685 is added to the Revenue and Taxation*
14 *Code, to read:*

15 *23685. (a) (1) For taxable years beginning on or after*
16 *January 1, 2005, subject to the limitation in paragraph (2), there*
17 *shall be allowed to a qualified taxpayer, as designated by the*
18 *California Film Commission pursuant to subdivision (i), that*
19 *makes an irrevocable election pursuant to subdivision (i) to*
20 *claim the credit authorized by this section, as a credit against the*
21 *"tax," as defined in Section 23036, an amount equal to 12*
22 *percent of the qualified amount. A movie of the week and a*
23 *miniseries, for which an executed licensing agreement from a*
24 *network or basic cable entity is provided, shall be entitled to an*
25 *additional 3 percent of the qualified amount.*

26 *(2) The credit allowed by paragraph (1) shall not exceed the*
27 *lesser of:*

28 *(A) The amount of the credit allocated to the qualified*
29 *taxpayer by the California Film Commission based on the initial*
30 *application.*

31 *(B) The amount of the credit calculated based on actual*
32 *allowable expenditures on the qualified motion picture.*

33 *(C) Three million dollars (\$3,000,000) per qualified motion*
34 *picture.*

35 *(b) For purposes of this section:*

36 *(1) "Ancillary product" means any article for sale to the*
37 *public that contains a portion of, or any element of, the motion*
38 *picture.*

39 *(2) "Budget" means an estimate of all expenses paid or*
40 *incurred during the production period of a motion picture. It*

1 shall be the same budget used by the qualified taxpayer and
2 production company for all qualified motion picture purposes.

3 (3) "Clip use" means a use of any portion of a motion picture,
4 other than the qualified motion picture, used in the qualified
5 motion picture.

6 (4) (A) "Employee fringe benefits" means the amount
7 allowable as a deduction under this part to the qualified taxpayer
8 involved in the production of the qualified motion picture for any
9 year during the production period with respect to any of the
10 following:

11 (i) Employer contributions under any pension, profit-sharing,
12 annuity, or similar plan.

13 (ii) Employer-provided coverage under any accident or health
14 plan for employees.

15 (iii) The employer's cost of life or disability insurance
16 provided to employees.

17 (B) Any amount treated as wages under clause (i) of
18 subparagraph (A) of paragraph (21) shall not be taken into
19 account under this paragraph.

20 (5) "Licensing" means any grant of rights to distribute the
21 qualified motion picture, in whole or in part.

22 (6) "Movie of the week" and "miniseries" both mean a motion
23 picture, produced for initial exploitation on television, which
24 contains a scripted storyline requiring two or more consecutive
25 hours of programming.

26 (7) "New to California" means a television series that has not
27 previously engaged in principal photography in this state, other
28 than for a production that is a pilot or presentation.

29 (8) "New use" means any use of a motion picture in a medium
30 other than the medium for which it was initially created.

31 (9) (A) "Postproduction" means the final activities in a
32 qualified motion picture's production, including editing, foley
33 recording, automatic dialogue replacement, sound editing,
34 scoring and music editing, beginning and end credits, negative
35 cutting, negative processing and duplication, the addition of
36 sound and visual effects, soundmixing, film to tape transfers,
37 encoding, and color correction.

38 (B) "Postproduction" does not include the manufacture or
39 shipping of release prints.

1 (10) “Preproduction” means the process of preparation for
2 actual physical production which begins after a qualified motion
3 picture has received a firm agreement of financial commitment,
4 or is greenlit, with, for example, the establishment of a dedicated
5 production office, the hiring of key crew members, and includes,
6 but is not limited to, activities that include location scouting and
7 execution of contracts with vendors of equipment and stage
8 space.

9 (11) “Principal photography” means the phase of production
10 during which the motion picture is actually shot, as distinguished
11 from preproduction and postproduction.

12 (12) “Production accountant” means an employee of the
13 production company whose duties include some or all of the
14 following activities: oversight of production budgets, cost
15 reporting, order management, payment of expenses, and the
16 review of financial reports for accuracy and completeness.

17 (13) “Production company” means a company primarily
18 engaged in qualified production activities that have been
19 approved by the California Film Commission.

20 (14) “Production period” means the period of time in which
21 the preproduction, principal photography, and postproduction
22 occurs until the qualified motion picture is completed, as
23 described in clause (v) of subparagraph (C) of paragraph (18).

24 (15) (A) “Qualified amount” means all of the following:

25 (i) The total amount paid or incurred during the production
26 period for qualified wages with respect to the production of each
27 qualified motion picture.

28 (ii) The total amount paid or incurred during the production
29 period for qualified property.

30 (iii) Amounts paid or incurred for qualified wages and
31 qualified property related to the qualified motion picture for
32 preproduction costs that include set design and construction,
33 props, wardrobe, prosthetics, testing, and location scouting that
34 are paid or incurred. In the case of a television series described
35 in clause (ii) of subparagraph (C) of paragraph (18), the
36 amounts paid or incurred for the items described in this
37 subparagraph shall be ratably allocated amongst the episodes
38 produced in the first season of production.

39 (B) Notwithstanding subparagraph (A), the term “qualified
40 amount” shall not include any qualified wages paid or incurred

1 for services performed nor any qualified property purchased or
2 leased before January 1, 2006.

3 (16) “Qualified entity” means a personal service corporation
4 as defined in Section 269A(b)(1) of the Internal Revenue Code, a
5 payroll services corporation, or any entity receiving qualified
6 wages with respect to services performed by a qualified
7 individual.

8 (17) (A) “Qualified individual” means any individual who
9 performs services during the production period in an activity
10 related to the production of a qualified motion picture.

11 (B) “Qualified individual” shall not include either of the
12 following:

13 (i) Any individual related to the qualified taxpayer as
14 described in subparagraph (A), (B), or (C) of Section 51(i)(1) of
15 the Internal Revenue Code.

16 (ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of
17 the Internal Revenue Code, of the qualified taxpayer.

18 (18) (A) “Qualified motion picture” means any motion
19 picture that is produced, adapted, or altered for exploitation in,
20 on, or through any medium or by any device, including, but not
21 limited to, a motion picture produced for exploitation in movie
22 theaters, through any form of television, videotapes, videodiscs,
23 DVDs, or any other digital format or on commercial carriers.
24 “Qualified motion picture” shall also include, but shall not be
25 limited to, all adapted versions thereof, whether adapted for
26 exploitation in any language, for any media, or otherwise.

27 (B) (i) “Qualified motion picture” shall not include any
28 motion picture produced for private noncommercial use, such as
29 weddings or graduations, made by students as part of any
30 educational course, or any motion picture produced for
31 industrial purposes.

32 (ii) “Qualified motion picture” shall not include a news
33 program, current events or public events program, talk show,
34 game show, sporting event or activity, awards show, telethon or
35 other production that solicits funds, reality television program, a
36 feature where 80 percent of more of the content consists of
37 computer-generated images, clip-based programming if more
38 than 50 percent of the content is comprised of licensed footage,
39 documentaries, variety programs, daytime dramas, strip shows,
40 one-half-hour (air time) episodic television shows, or any

1 *production that falls within the recordkeeping requirements of*
2 *Section 2257 of Title 18 of the United States Code.*

3 *(C) To qualify as a “qualified motion picture,” all of the*
4 *following additional conditions shall be satisfied:*

5 *(i) The qualified motion picture shall be a feature with a*
6 *minimum budget of five hundred thousand dollars (\$500,000)*
7 *and a maximum budget of seventy-five million dollars*
8 *(\$75,000,000), or a movie of the week or miniseries with a*
9 *minimum budget of five hundred thousand dollars (\$500,000)*
10 *and a maximum budget of seventy-five million dollars*
11 *(\$75,000,000).*

12 *(ii) A qualified motion picture shall also include a single*
13 *episode in a single season, not to exceed 22 episodes per season,*
14 *of a television series new to California with a minimum budget of*
15 *five hundred thousand dollars (\$500,000) and a maximum budget*
16 *of one million eight hundred thousand dollars (\$1,800,000). This*
17 *clause shall only apply to the first three seasons of a television*
18 *series that is new to California.*

19 *(iii) The actual expenses totaled at the completion of the*
20 *qualified motion picture must fall within the fiscal ranges*
21 *established in clause (i) or (ii) at the time of application to the*
22 *California Film Commission.*

23 *(iv) At least 75 percent of the total days spent in principal*
24 *photography of a qualified motion picture occur wholly in*
25 *California.*

26 *(v) Production of the motion picture is completed within 30*
27 *months of the date on which the qualified taxpayer’s application*
28 *was approved by the California Film Commission. For purposes*
29 *of this section, a qualified motion picture is “completed” when*
30 *the process of postproduction has been finished, and a final*
31 *answer print or broadcast delivery air master of the qualified*
32 *motion picture is produced.*

33 *(vi) Principal photography of the qualified motion picture*
34 *begins within 180 days of the designation of the taxpayer as a*
35 *qualified taxpayer by the California Film Commission.*

36 *(D) For the purposes of clauses (i) and (ii) of subparagraph*
37 *(C) the following additional rules apply:*

38 *(i) In computing the total amounts paid or incurred for the*
39 *production of a qualified motion picture, all amounts paid or*

1 incurred by all persons or entities that share in the costs of the
2 qualified motion picture shall be aggregated.

3 (ii) In the case of a television series, described in clause (ii) of
4 subparagraph (C), each episode shall be treated as a separate
5 qualified motion picture.

6 (E) For purposes of computing the limitations under this
7 paragraph, “wages” means all amounts described in
8 subparagraph (A) of paragraph (21), provided that these
9 amounts are paid or services performed or rendered within this
10 state.

11 (19) (A) “Qualified property” means tangible personal
12 property purchased or leased in California and is used primarily
13 in the production of a qualified motion picture.

14 (B) “Qualified property” shall not include a story, script, or
15 scenario to be used for a qualified motion picture, or the literary,
16 dramatic, or musical material upon which the qualified motion
17 picture is based or may be adapted, or any rights related to the
18 foregoing.

19 (20) (A) “Qualified taxpayer” means an applicant who has
20 been allocated tax credits by the California Film Commission
21 pursuant to subdivision (i).

22 (B) In the case of any passthrough entity, the determination of
23 whether a taxpayer is a qualified taxpayer under this section
24 shall be made at the entity level and any credit under this section
25 shall be allowed to the passthrough entity and passed through to
26 the partners or shareholders in accordance with applicable
27 provisions of Part 10 (commencing with Section 17001) or Part
28 11 (commencing with Section 23001). For purposes of this
29 paragraph, “passthrough entity” means any partnership or “S”
30 corporation.

31 (21) (A) “Qualified wages” means all of the following:

32 (i) Any wages reported under Section 13050 of the
33 Unemployment Insurance Code that were paid or incurred by the
34 production company involved in the production of a qualified
35 motion picture with respect to a qualified individual for services
36 performed on the qualified motion picture within this state.

37 (ii) The portion of any employee fringe benefits paid or
38 incurred by the production company involved in the production
39 of the qualified motion picture that are properly allocable to
40 qualified wage amounts described in clause (i).

1 (iii) Any payments made to qualified entity for services
2 performed on a qualified motion picture in this state by qualified
3 individuals within the meaning of paragraph (17).

4 (iv) Remuneration paid to an independent contractor, as
5 described in Section 2750.5 of the Labor Code, who is a qualified
6 individual for services performed within this state by that
7 qualified individual.

8 (B) "Qualified wages" shall not include any of the following:

9 (i) Expenses, including wages, for legal or accounting
10 services, except production accountants.

11 (ii) Expenses, including wages, in excess of the first
12 twenty-five thousand dollars (\$25,000) paid per person per
13 qualified motion picture for writers, directors, music directors,
14 music composers, music supervisors, producers, and performers,
15 other than background actors with no scripted lines.

16 (iii) Expenses, including wages, related to new use, reuse, clip
17 use, licensing, secondary markets, or residual compensation, or
18 the creation of any ancillary product, including, but not limited
19 to, a soundtrack album, toy, game, trailer, or teaser.

20 (iv) Expenses, including wages, paid or incurred with respect
21 to acquisition, development, turnaround, or any rights thereto.

22 (v) Expenses, including wages, related to financing, overhead,
23 marketing, promotion, or distribution of a qualified motion
24 picture.

25 (22) "Residual compensation" means supplemental
26 compensation paid at the time that a motion picture is exhibited
27 through new use, reuse, clip use, or in secondary markets, as
28 distinguished from payments made during production.

29 (23) "Reuse" means any use of a qualified motion picture in
30 the same medium for which it was created, following the initial
31 use in that medium.

32 (24) "Secondary markets" means media in which a qualified
33 motion picture is exhibited following the initial media in which it
34 is exhibited.

35 (c) (1) Notwithstanding subdivision (i) of Section 23036,
36 related to credits attributable to a disregarded business entity, in
37 the case where the credit allowed by this section exceeds the
38 taxpayer's tax liability computed under this part, the excess shall
39 be credited against other amounts due, if any, from the taxpayer

1 *and, except as provided in paragraph (2), the balance, if any,*
2 *shall be refunded to the taxpayer.*

3 *(2) No portion of the credit allowed by this section shall be*
4 *refunded to a "S" corporation.*

5 *(3) Notwithstanding Section 23803, the amount of credit*
6 *claimed by an "S" corporation pursuant to this section shall be*
7 *reduced by an amount equal to the amount of credit claimed by*
8 *the shareholders of the "S" corporation.*

9 *(4) Those amounts that are determined by the Franchise Tax*
10 *Board to be necessary to make the refunds required by this*
11 *subdivision, notwithstanding Section 13340 of the Government*
12 *Code, shall be continuously appropriated from the Corporation*
13 *Tax Fund, commencing with the 2006-07 fiscal year, but*
14 *otherwise without regard to fiscal years, to the Franchise Tax*
15 *Board for the purpose of making those refunds.*

16 *(d) The amount of any credit allowed under this section to the*
17 *qualified taxpayer shall be treated as an item of income of the*
18 *qualified taxpayer from a separate trade or business conducted*
19 *wholly within this state for the taxable year in which the credit is*
20 *allowed.*

21 *(e) No credit shall be allowed pursuant to this section unless*
22 *the qualified taxpayer substantiates, by adequate books and*
23 *records or by sufficient evidence corroborating his or her own*
24 *statement, that:*

25 *(1) The qualified wages and the qualified property on which*
26 *the credit was calculated were actually paid or incurred in the*
27 *amount claimed. Substantiation of this item shall include proof*
28 *that the services were performed in California and the qualified*
29 *property was purchased or leased in California.*

30 *(2) The motion picture was a qualified motion picture.*
31 *Substantiation of this item shall include, but not limited to, the*
32 *following:*

33 *(A) Identification of each qualified individual.*

34 *(B) The specific start and end dates of production.*

35 *(C) The total wages paid and the amount and type of qualified*
36 *property purchased.*

37 *(D) The amount of qualified wages paid to each qualified*
38 *individual.*

1 (E) Certification from the Director of the California Film
2 Commission that identifies the motion picture as a qualified
3 motion picture.

4 (f) The Franchise Tax Board shall provide an annual listing to
5 the State Board of Equalization, in a form and manner agreed
6 upon by the Franchise Tax Board and the State Board of
7 Equalization, of the qualified taxpayers who, during that
8 reporting period, have claimed a credit under this section,
9 including the amount of the credit allowed to each qualified
10 taxpayer.

11 (g) Subdivision (c) of Section 19341, relating to interest on
12 overpayments, shall not apply to any return claiming a credit
13 under this section.

14 (h) If the qualified taxpayer fails to attach the certification
15 issued by the California Film Commission, in accordance with
16 subdivision (i), the credit shall be disallowed and assessed and
17 collected under Section 19051.

18 (i) (1) For purposes of this section, the Director of the
19 California Film Commission shall do all of the following:

20 (A) Allocate tax credits to applicants.

21 (B) Establish a procedure for qualified taxpayers to file with
22 the California Film Commission a written application, on a form
23 jointly prescribed by the California Film Commission and the
24 Franchise Tax Board, for allocation of tax credits. The
25 application shall be filed under penalty of perjury and include,
26 but not be limited to, the following information:

27 (i) The budget for the motion picture production.

28 (ii) A one-line shooting schedule.

29 (iii) A financing plan for the production.

30 (iv) An application fee.

31 (v) The copyright registration number for the screenplay, as
32 reflected on the certificate of registration issued under the
33 authority of Section 410 of Title 17 of the United States Code,
34 relating to registration of claim and issuance of certificate.

35 (vi) Any other information deemed relevant by the California
36 Film Commission.

37 (C) Establish a procedure for qualified taxpayers to make an
38 irrevocable election to claim the tax credit allocation as a credit
39 pursuant to this section or as a refund or credit pursuant to
40 Section 6902.5.

1 (D) Determine and designate who is a qualified taxpayer
2 meeting the requirements of this section.

3 (E) Process and approve, or reject, all applications on a
4 first-come, first-served basis.

5 (F) Provide for the cancellation of the allocated credits if
6 principal photography on the qualified motion picture does not
7 begin within 180 days after notification of the credit allocation
8 by the California Film Commission in accordance with
9 subdivision (j).

10 (G) Establish specific audit requirements, in addition to those
11 provided under current law, that must be complied with prior to
12 the issuance of the certificate required by subparagraph (H), and
13 provide for the reallocation of previously approved credits that
14 are disallowed pursuant to the audit requirements, in accordance
15 with subdivision (j).

16 (H) Issue a certificate to the qualified taxpayer setting forth
17 the name of the qualified taxpayer, the identification of the
18 qualified motion picture, and the total amount of the tax credit
19 allocated.

20 (2) No later than March 1, 2006, the California Film
21 Commission shall promulgate rules and regulations necessary to
22 establish procedures, processes, requirements, and rules
23 identified in or required to implement this section. Rules and
24 regulations may be adopted on an emergency basis if necessary
25 to meet the March 1, 2006, deadline. The California Film
26 Commission may amend these rules and regulations as
27 necessary. The California Film Commission may adopt rules and
28 regulations to more narrowly define the terms listed in
29 subdivision (b) to limit their meaning, but may not expand the
30 definition of any terms defined in subdivision (b).

31 (j) The aggregate amount of credits that may be allocated in
32 any calendar year pursuant to this section and Section 17053.85
33 shall be an amount equal to the sum of all the following:

34 (1) _____ million dollars (\$_____) for each calendar quarter,
35 and each calendar quarter thereafter.

36 (2) The unused credit ceiling, if any, for the preceding
37 calendar quarter.

38 (3) The amount of previously allocated credit canceled or
39 disallowed in the preceding calendar quarter by reason of

1 subparagraph (F) or subparagraph (G) of paragraph (1) of
2 subdivision (i).

3 (k) The California Film Commission shall provide a list, at
4 least annually, to the Franchise Tax Board, in the form and
5 manner as shall be determined by the California Film
6 Commission and the Franchise Tax Board, of the names,
7 taxpayer identification numbers, including taxpayer
8 identification numbers of each partner or shareholder, as
9 applicable, the qualified motion pictures for which tax credit was
10 allocated, and the total amount of the tax credit allocated to each
11 qualified taxpayer.

12 (l) This section shall remain in effect only until January 1,
13 2016, and as of that date is repealed, unless a later enacted
14 statute, that is enacted before January 1, 2016, deletes or extends
15 that date.

16 SEC. 7. Section 23686 is added to the Revenue and Taxation
17 Code, to read:

18 23686. (a) (1) For taxable years beginning on or after
19 January 1, 2005, subject to the limitation in paragraph (2), there
20 shall be allowed to a qualified commercial production company,
21 as designated by the California Film Commission pursuant to
22 subdivision (h), as a credit against the "tax," as defined in
23 Section 23036, an amount equal to 12 percent of the incremental
24 qualified production costs.

25 (2) The credit allowed by paragraph (1) shall not exceed:

26 (A) Five hundred thousand dollars (\$500,000) per qualified
27 production company per calendar year.

28 (B) The amount of the credit allocated by the California Film
29 Commission to the qualified commercial production company
30 pursuant to subdivision (h).

31 (b) For the purposes of this section:

32 (1) "Base year" is the taxable year preceding the taxable year
33 in which the credit is claimed.

34 (2) (A) "Employee fringe benefits" means the amount
35 allowable as a deduction under this part to the qualified
36 commercial production company involved in the production of
37 the qualified commercial for any year during the production
38 period with respect to any of the following:

39 (i) Employer contributions under any pension, profit-sharing,
40 annuity, or similar plan.

1 (ii) Employer-provided coverage under any accident or health
2 plan for employees.

3 (iii) The employer's cost of life or disability insurance provide
4 to employees.

5 (B) Any amount treated as wages under clause (i) of
6 subparagraph (A) of paragraph (10) shall not be taken in
7 account under this paragraph.

8 (3) "Incremental qualified production costs" are any qualified
9 production costs for the taxable year greater than the qualified
10 production costs for the base year.

11 (4) "Principal photography" means the phase of production
12 during which the qualified commercial is actually shot.

13 (5) "Postproduction" means the final activities in a qualified
14 commercial's production, including, but not limited to, offline
15 editorial, online editorial, dailies, color correction, compositing,
16 CGI, graphics, sound editorial, sound mixing, sound design,
17 automated dialogue replacement, foley recording, music
18 composition and scoring, and duplication associated with the
19 above process.

20 (6) (A) "Qualified commercial" means a commercial or
21 advertisement composed of moving images and sounds that is
22 recorded on film, videotape, or other digital medium, created for
23 display on a network, regional channel, or cable where 75
24 percent of the total production days spent in principal
25 photography occur wholly in California.

26 (B) "Qualified commercial" shall not include any program
27 length production with an advertising component including a
28 documentary length commercial, an infomercial, news, or
29 current affairs program, interview or talk program, network
30 promotion (short form content intended to promote other
31 programming), sporting event, game show, award ceremonies,
32 daytime dramas, reality entertainment programming or program
33 intended primarily for industrial, corporate, or institutional end
34 users, fundraising or political commercials, a program
35 consisting of primarily of stock footage, a program produced by
36 organization organized under Section 527 of the Internal
37 Revenue Code, or any production that fall within the
38 recordkeeping requirements of Section 2257 of Title 18 of the
39 United States Code.

(7) (A) “Qualified commercial production company” means a taxpayer, allocated tax credits by the California Film Commission pursuant to subdivision (h), that is principally engaged in the production of a qualified commercial and has control over the selection of production location, deployment, or management of the production equipment, and directly employs the production crew on the qualified commercial, or is a taxpayer who provides qualified postproduction services.

(B) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified commercial production company under this section shall be made at the entity level and any credit under this section shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For the purposes of this paragraph, “passthrough entity” means any partnership or “S” corporation.

(8) (A) “Qualified individual” means any individual who performs services during the production period in an activity related to the production of a qualified commercial.

(B) “Qualified individual” shall not include either of the following:

(i) Any individual related to the qualified commercial production company as described in subparagraph (A), (B), (C), or Section 51(i)(1) of the Internal Revenue Code.

(ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of the Internal Revenue Code, of the qualified commercial production company.

(9) “Qualified production costs” means all of the following:

(A) Costs for tangible property used and services performed directly and predominately in the production of a qualified commercial.

(B) Costs for qualified wages, technical and crew production costs, allocable portions of depreciation on equipment directly used in production, rental or other expenditures for commercial production facilities, props, makeup, wardrobe, film processing, camera rental, sound recording, set construction, lighting, on-location meals, and lodging.

(C) Costs for equipment and services required to complete postproduction of the qualified commercial.

1 (D) “Qualified production costs” does not include costs for
2 story, script, or scenario to be used for a qualified commercial,
3 or any qualified wages paid or incurred before January 1, 2006.

4 (10) (A) “Qualified wages” means all of the following:

5 (i) Any wages reported under Section 13050 of the
6 Unemployment Insurance Code that were paid or incurred by the
7 qualified commercial production company involved in the
8 production of a qualified commercial with respect to a qualified
9 individual for services performed on the qualified commercial
10 production within this state.

11 (ii) The portion of any employee fringe benefits paid or
12 incurred by the qualified commercial production company
13 involved in the production of a qualified commercial that are
14 properly allocation to qualified wage amounts described in
15 clause (i).

16 (iii) Remuneration paid to a qualified individual for services
17 performed within this state by that qualified individual.

18 (iv) Remuneration paid to an independent contractor, as
19 described in Section 2750.5 of the Labor Code, who is a qualified
20 individual for services performed in this state by that qualified
21 individual.

22 (B) “Qualified wages” shall not include wages, salaries, or
23 other compensation for writers, directors, music directors,
24 producers and performers (other than background actors with no
25 scripted lines who are employed by a qualified commercial
26 production company.

27 (c) (1) Notwithstanding subdivision (g) of Section 23036,
28 relating to credits attributable to a disregarded business entity,
29 in the case where the credit allowed by this section exceeds the
30 taxpayer’s tax liability computed under this part, the excess shall
31 be credited against other amounts due, if any, from the taxpayer
32 and, except as provided in paragraph (2), the balance, if any,
33 shall be refunded to the taxpayer.

34 (2) No portion of the credit allowed by this section shall be
35 refunded to a “S” corporation.

36 (3) Notwithstanding Section 23803, the amount of credit
37 claimed by an “S” corporation pursuant to this section shall be
38 reduced by an amount equal to the amount of credit claimed by
39 the shareholders of the “S” corporation.

1 (4) *Those amounts that are determined by the Franchise Tax*
2 *Board to be necessary to make the refunds required by this*
3 *subdivision, notwithstanding Section 13340 of the Government*
4 *Code, shall be continuously appropriated from the Corporation*
5 *Tax Fund, commencing with the 2006-07 fiscal year, but*
6 *otherwise without regard to fiscal years, to the Franchise Tax*
7 *Board for the purpose of making those refunds.*

8 (d) *The amount of any credit allowed under this section to the*
9 *qualified commercial production company shall be treated as an*
10 *item of income of the qualified commercial production company*
11 *from a separate trade or business conducted wholly within this*
12 *state for the taxable year in which the credit is allowed.*

13 (e) *No credit shall be allowed pursuant to this section unless*
14 *the qualified commercial production company substantiates, by*
15 *adequate books and records or by sufficient evidence*
16 *corroborating his or her own statement, that:*

17 (1) *The incremental qualified production costs upon which the*
18 *credit was calculated were actually paid or incurred in the*
19 *amount claimed.*

20 (2) *The commercial was a qualified commercial.*
21 *Substantiation of this item shall include, but is not limited to, the*
22 *following:*

23 (A) *Identification of each qualified individual.*

24 (B) *The specific start and end dates of production.*

25 (C) *The total wages paid.*

26 (D) *The amount of qualified wages paid to each qualified*
27 *individual.*

28 (E) *Certification from the Director of the California Film*
29 *Commission as required in subdivision (h).*

30 (f) *Subdivision (c) of Section 19341, relating to interest on*
31 *overpayments, shall not apply to any return claiming a credit*
32 *under this section.*

33 (g) *If the qualified commercial production company fails to*
34 *attach the certification issued by the California Film*
35 *Commission, in accordance with subdivision (h), the credit shall*
36 *be disallowed and assessed under Section 19051.*

37 (h) (1) *For purposes of this section, the Director of the*
38 *California Film Commission shall do all of the following:*

39 (A) *Allocate tax credits to applicants, including establishing a*
40 *procedure to allocate tax credits among qualified commercial*

1 *production companies pursuant to paragraph (2) of subdivision*
2 *(i).*
3 *(B) Establish a procedure for qualified commercial production*
4 *companies to file with the commission a written application, on a*
5 *form jointly prescribed by the commission and the Franchise Tax*
6 *Board, for allocation of tax credits. The application shall be filed*
7 *under penalty of perjury and include, but not be limited to, the*
8 *following information:*
9 *(i) The qualified production costs for the base year.*
10 *(ii) The qualified production costs for the taxable year in*
11 *which the credit is claimed.*
12 *(iii) An application fee.*
13 *(iv) Any other information deemed relevant by the*
14 *commission.*
15 *(C) Determine and designate who is a qualified commercial*
16 *production company meeting the requirements of this section.*
17 *(D) Process and approve, or reject, all applications.*
18 *(E) Establish specific audit requirements, in addition to those*
19 *provided under current law that must be complied with prior to*
20 *the issuance of the certificate required by subparagraph (f), and*
21 *to provide for the reallocation of previously approved credits*
22 *that are disallowed pursuant to the audit requirements, in*
23 *accordance with subdivision (i).*
24 *(F) Issue a certificate to the qualified taxpayer setting forth*
25 *the name of the qualified taxpayer and the total amount of the tax*
26 *credit allocated.*
27 *(2) No later than March 1, 2006, the California Film*
28 *Commission shall promulgate rules and regulations necessary to*
29 *establish procedures, processes, requirements, and rules*
30 *identified in or required to implement this section. Rules and*
31 *regulations may be adopted on an emergency basis if necessary*
32 *to meet the March 1, 2006, deadline. The California Film*
33 *Commission may amend these rules and regulations as*
34 *necessary. The California Film Commission may adopt rules and*
35 *regulations to more narrowly define the terms listed in*
36 *subdivision (b) to limit their meaning, but may not expand the*
37 *definition of any terms defined in subdivision (b).*
38 *(i) (1) The aggregate amount of credits that may be allocated*
39 *in any calendar year pursuant to this section and Section*

1 17053.86 shall be an amount equal to the sum of all of the
2 following:

3 (A) _____ million dollars (\$_____) for the 2006 calendar year,
4 and each calendar year thereafter.

5 (B) The unused credit ceiling, if any, for the preceding
6 calendar years.

7 (C) The amount of previously allocated credit cancelled or
8 disallowed in the calendar year by reason of subparagraph (E)
9 of paragraph (1) of subdivision (h).

10 (2) If the amount allocable to qualified commercial production
11 companies exceeds the aggregate amount of credits that may be
12 allocated in any calendar year, the credits shall be distributed to
13 qualified commercial production companies as follows:

14 (A) The California Film Commission shall allocate the credits
15 on a pro rata basis to qualified commercial production
16 companies for the designated period.

17 (B) The California Film Commission will compute the pro rata
18 allocation based on submitted applications from all qualified
19 commercial production companies within 120 days of the
20 application due date.

21 (j) The California Film Commission shall provide a list, at
22 least annually, to the Franchise Tax Board, in the form and
23 manner as shall be determined by the California Film
24 Commission and the Franchise Tax Board, of the names,
25 taxpayer identification numbers, including taxpayer
26 identification numbers of each partner or shareholder, as
27 applicable, the qualified motion pictures for which tax credit was
28 allocated, and the total amount of the tax credit allocated to each
29 qualified taxpayer.

30 (k) This section shall remain in effect only until January 1,
31 2016, and as of that date is repealed, unless a later enacted
32 statute, that is enacted before January 1, 2016, deletes or extends
33 that date.

34 SEC. 8. (a) On or before December 31, 2010, the Business,
35 Transportation and Housing Agency shall report to the
36 Legislature on the economic impact of the tax incentives created
37 by this act. In preparing the report, the agency shall consider,
38 but is not limited to considering, all of the following:

39 (1) The number and increase or decrease of qualified motion
40 pictures and qualified commercials produced in California.

1 (2) *The amount of total qualified wages paid or incurred in*
2 *California.*

3 (3) *The level of employment in the production industry in*
4 *California.*

5 (b) *The agency may consult with the Employment*
6 *Development Department, the Franchise Tax Board, the State*
7 *Board of Equalization, representatives of industry and labor*
8 *organizations, and agencies of local government before*
9 *completing its report.*

10 SEC. 9. *The provisions of this act are severable. If any*
11 *provision of this act or its application is held invalid, that*
12 *invalidity shall not affect other provisions or applications that*
13 *can be given effect without the invalid provision or application.*

14 SEC. 10. *If this bill is enacted during the 2005-06 Regular*
15 *Session and establishes a tax credit, but this type of tax credit is*
16 *later held to be unconstitutional by the United States Supreme*
17 *Court in Cuno v. DaimlerChrysler, Inc. (6th Cir. 2004) 386 F.3d*
18 *738, the provisions of this act shall become inoperative on the*
19 *effective date of that judgment.*

20 SEC. 11. *No reimbursement is required by this act pursuant*
21 *to Section 6 of Article XIII B of the California Constitution*
22 *because the only costs that may be incurred by a local agency or*
23 *school district will be incurred because this act creates a new*
24 *crime or infraction, eliminates a crime or infraction, or changes*
25 *the penalty for a crime or infraction, within the meaning of*
26 *Section 17556 of the Government Code, or changes the definition*
27 *of a crime within the meaning of Section 6 of Article XIII B of the*
28 *California Constitution.*

29 SEC. 12. *This act provides for a tax levy within the meaning*
30 *of Article IV of the Constitution and shall go into immediate*
31 *effect.*

32 ~~SECTION 1. (a) The Legislature finds and declares that a~~
33 ~~number of analyses, including the 1999 Directors Guild of~~
34 ~~America and Screen Actors Guild, the US Runaway Film and~~
35 ~~Television Production Study Report, and the 2005 Motion~~
36 ~~Picture Association Film Production Report, indicate that~~
37 ~~runaway production is having an increasingly dramatic economic~~
38 ~~impact on American film and television production, but there is~~
39 ~~not significant data detailing the economic impact of runaway~~
40 ~~production on the California economy.~~

1 ~~(b) The California Film Commission, in collaboration with the~~
2 ~~Business, Transportation and Housing Agency, the Labor and~~
3 ~~Workforce Development Agency, and the Franchise Tax Board,~~
4 ~~shall conduct a statewide analysis of the impact of runaway~~
5 ~~production on the California film industry, including the number~~
6 ~~and quality of production-related jobs, number of films produced~~
7 ~~within the state, and the gross impact on the economy of~~
8 ~~California. The analysis shall cover the period between 1995 to~~
9 ~~2005, inclusive, and include a description of the various~~
10 ~~economic incentives that other states and countries are providing~~
11 ~~to the film industry. The analysis shall be completed utilizing~~
12 ~~existing data and within existing resources. By March 1, 2006,~~
13 ~~the commission shall submit a report on the analysis to the~~
14 ~~Legislature.~~

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